

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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| MATTHEW MCSHANE, | : | |
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| Plaintiff | : | CIVIL ACTION NO. 3:21-1396 |
| | : | |
| v. | : | (MANNION, D.J.) |
| | : | |
| AGENTS OF INTERNATIONAL MONETARY FUND, <i>et al.</i>, | : | (CARLSON, M.J.) |
| Defendants | : | |

ORDER

Pending before the court is the report of United States Magistrate Judge Martin C. Carlson, which recommends that the November 29, 2021 motion to dismiss the *pro se* complaint of plaintiff Matthew McShane filed by defendant, Geoffrey Moulton, the Pennsylvania Court Administrator, (Doc. 12), be granted, and that this defendant be dismissed with prejudice. (Doc. 16). Judge Carlson recommends the granting of Moulton's motion as unopposed pursuant to Local Rule 7.6, M.D. PA., since McShane failed to file a brief in opposition to it, as well as pursuant to Fed.R.Civ.P. 12(b)(6), for failure to state a claim against this defendant. No objections have been filed by either party to Judge Carlson's report and the time within which they were due has lapsed.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Since the report correctly states the procedural and factual background of this case, it shall not be repeated herein.

Initially, as the report explains, plaintiff McShane failed to file an opposition brief to Moulton’s motion despite being afforded, *sua sponte*, more time to oppose it and, despite being warned of the consequences if he failed to file a brief. (See Doc. 15). Nor has plaintiff filed a request for additional time to file a brief since the filing of the report on January 3, 2022. Thus, plaintiff McShane is deemed as not opposing Moulton’s motion to dismiss, and it is granted on this basis.

Moreover, the report explains that even if Mouton's motion is considered on its merits, it should be granted. The report states the correct standard for consideration of a Rule 12(b)(6) standard as well as the pleading standards under Fed.R.Civ.P. 8, and it properly finds that the deficiencies in McShane's complaint against Moulton warrant its dismissal.

Finally, the report correctly finds that Moulton should be dismissed with prejudice since it would be futile to allow McShane to amend his complaint against this defendant since he is entitled to immunity from liability for his actions taken as a Pennsylvania court administrator. (Doc. 16 at 14-15) (citing Conklin v. Anthou, 495 F.App'x 257, 263 (3d Cir. 2012)).

The court has considered the findings in Judge Carlson's report and finds no clear error of law. Moreover, the court agrees with the sound reasoning which has led Judge Carlson to the conclusions in his report. As such, the report and recommendation will be adopted in its entirety as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1)The report and recommendation of Judge Carlson, (Doc. 16), is

ADOPTED IN ITS ENTIRETY AS THE RULING OF THE COURT.

(2) The motion to dismiss plaintiff McShane's complaint, (Doc. 1), filed by defendant Moulton, (**Doc. 12**), is **GRANTED**, and Moulton is **DISMISSED WITH PREJUDICE** from this case.

(3) The Clerk of Court is directed to **REMAND THIS CASE** to Judge Carlson for further proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: January 31, 2022

21-1396-01